



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

JANUARY 27, 2009

PRESENT: Acevedo, Koepp-Baker, Escobar, Lyle, Mueller, Tanda

ABSENT: None

LATE: None

STAFF: Planning Manager (PM) Rowe, Senior Planner (SP) Linder, and Minutes Clerk Johnson.

Chair Koepp-Baker called the meeting to order at 7:00 p.m., inviting all present to join ask she led the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Koepp-Baker opened the floor to public comment for matters not appearing on the agenda.

Noting that no persons in attendance expressed a wish to address items not appearing on the agenda, Chair Koepp-Baker closed the public hearing.

CONSENT CALENDAR:

MINUTES:

JANUARY 13,
2009

COMMISSIONERS MUELLER/TANDA MOTIONED TO APPROVE THE JANUARY 13, 2009 MINUTES WITH THE FOLLOWING REVISIONS:
Page 7, paragraph 4, 3rd bullet: 700 - 800 ~~allocation not used~~ *allocations yet to pull permits*
Page 8, paragraph 9: City is ~~trying to allocate into categories~~ *should reassign unused allotments to other categories,*
Page 9, (add) paragraph 4: *Commissioner Lyle commented, "Not increasing the 54 to 69 would mean that this project would be left with only a 45 unit structure to be built*

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and that could require up to 3 years to get sufficient allotments to do the building.

Page 14, paragraph 2: *He also stated, "We've heard your concerns about the netting height, and will work with the City that issue."*

Page 15, paragraph 10: *conflict of interest based on relationships with a developer*

Page 15, paragraph 11: Commissioner Lyle reminded that Planning Commission excellence point ~~must be unanimous (or at least gain a major majority of votes {3 of 4} for the one point to be awarded.~~ *requires a unanimous Planning Commission vote for 2 points, or a super majority (3 of 4 votes) for one point.*

Page 17 [referencing MC-08-13]: (add) *The Commissioners agreed by consensus, and accordingly added 1 (one) point in that category, causing the final score to be 173.*

Page 17, paragraph 7, line 13: ...I like open space but ~~this is made by~~ *this project should not be getting bonus points for taking* from the 40,000 sf lots to make that open space – it should have remained in people's lots.

line 15: ~~The problem with this system which could impact lot sizes and setbacks is that it is based on lot sizes.~~

line 17: I believe this application has been over scored more than any other remembered and ~~that is a problem with procedural scoring~~ *there are also procedural problems with the scoring."*

THE MOTION THE MOTION PASSED (5-0-1-0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: ESCOBAR, who was not present at the meeting; ABSENT: NONE. *One vacancy exists on the Commission.*

PUBLIC HEARINGS:

1) BMR REDUCTION PROGRAM

Amendments to Development Agreements to implement reduction in BMR commitments in exchange for project enhancements.

1a) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-13C: JARVIS-SOUTH VALLEY DEVELOPERS: A 60-unit town home project site approximately nine acres in size, located at the southeast corner of Cochrane Rd. and Monterey Rd. in an R3 (PUD) zoning district. (APN 726-25-076)

1b) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-04E: MAIN-MARRAD: A 35-unit single-family residential project site located on the south side of east Main Ave., approximately 500 ft. east of Calle Mazatan in an R-1 7,000 PD zoning district. (APN 726-16-028)

1c) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-02D: COCHRANE-LUPINE: Phase 3B consisting of 18 dwelling units. The overall project site is approximately 61 acres in size and is located north of Peet Rd. and east of Cochrane Rd. in a R1(12,000)/RPD zoning district. (APNs 728-49-062 thru -064)

1d) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-01D: COCHRANE-MISSION RANCH: The Mission Ranch project is located on the west side of Peet Rd., east of Mission View Dr. in the R-1 7,000 RPD zoning district. (APN 728-32-010)

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1e) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-07E: WRIGHT-MANANA: A 15-unit single-family attached residential development located on the northeast quadrant of the intersection of Wright Ave. and Oak Grove Ave. (APN 764-32-061 & 063)

1f) DEVELOPMENT AGREEMENT AMENDMENT, DAA-04-09D: E. DUNNE-DEMPSEY/DELCO: A 78-unit multi-family residential development located on south west corner of the intersection of E. Dunne Ave. and San Benancio Way in the R-2 (3,500) RPD zoning district. (APN 817-11-067 & 072)

1g) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-05D: E. CENTRAL-DELCO/HU: A 39-unit single-family residential development located on north side of Central Ave. east of Butterfield Blvd. in the R-2 RPD zoning district. (APN 726-26-004)

1h) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-08D: CHURCH-ALCINI/OLD ORCHARD: A 14-unit multi-family residential development project located in the northwest quadrant of the intersection of Church St. and Bisceglia Ave. in the CC-R zoning district. (APN 817-01-061 & 062)

1i) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-10C: BARRETT-SYNCON: A 52 unit single family residential project located on the northwest corner of the intersection of Barrett Ave. and San Ramon Dr. in the R-1 7,000 RPD zoning district. (APN 817-59-060 & 817-57-001)

1j) DEVELOPMENT AGREEMENT AMENDMENT, DAA-04-05C: BARRETT-ODISHOO: A 36-unit single-family project located on the southwest corner of the intersection of Barrett Ave. and San Ramon Dr. in the R-1 7,000 RPD zoning district. (817-33-003)

1k) DEVELOPMENT AGREEMENT, DA-06-04: DIANA-CHAN: The 117-unit single-family detached Sherimar Ranch project located on a 42-acre site on the south side of Diana Ave. between Murphy Ave. and Ringel Dr. (APNs 728-18-012, 728-19-001, 002, 003 and 728-20-037 & 038)

PM Rowe and SP Linder presented the staff report, noting that this matter had gained importance in August 2008 when the City Manager presented a report to the Council on the underlying issues that kept approved housing projects from moving forward. The matter had then been referred to the Planning Commission for suggestions that would address the underlying issues. Several recommendations, PM Rowe said, had been discussed by the Commissioners; both in the regular meetings as well as workshops collaborated with builders and developers. Of particular interest, he said, was a temporary waiver of Below Market Rate (BMR) units. At the December 16 workshop, in-depth discussion was held of a program for delaying BMRs and a BMR reduction program which had been assessed by staff with a point system assigned to enhance project sales while assisting applicants with a process for moving the projects forward.

At the request of Commissioner Tanda, PM Rowe provided an overview of BMRs and the proposed program for audience:

- income level actual pricing of home >> affordable housing
- contractual agreement for developer to meet

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- low and median income housing
- current housing crisis
- banks reticence at making loans
- at this meeting, 12 project developments to consider for inclusion into the BMR reduction program

PM Rowe noted the Standard Language and distributed revisions for each of the records (1 – 11) in Agenda Item 1. He explained that the language (highlighted in yellow) had been added for clarification [which SP Linder explained], and noted that the language was designed to keep projects moving forward to completion. SP Linder went on to detail that in the handouts, a fifth line item should be added, noting that the median BMR could be eliminated first, rather than the low income BMR. She also went on to provide an overview of the tables in Exhibits 1 – 11 wherein full reduction and 50% reduction for each of the phases was defined. Minor discrepancies/ difficulties with the tables were explained as either currently corrected or needing further minor work to be accomplished by staff, e.g., Exhibit A (Delco ~2nd revision) still must give more consideration as the permits have been pulled with the foundation started but the roof sheeting not done yet.

Commissioners discussed:

- in some cases some of the new tables a waiver might be possible if projects get more done than originally thought
- consideration of additional language in the event of dispute (or failed project) ~ back to Commission for resolution
- request not always consistent with staff work ~ variations may have been recommended by staff
- requests for extension of time (to be determined in agenda item 2)

Chair Koepp-Baker opened the public hearing.

Don Lapidus, 991 Solana Ct., Mt. View, addressed the Commissioners regarding the two projects in which he is involved:

Jasper Park where one BMR is required for six homes

Central Delco: Mr. Lapidus explained that the foundations are in for last 15 homes and he wanted to make sure of the requirements as they now seem different:

- by September 30 commence construction under old guidelines [yes, no change]
- problem {according to the staff report} stopped construction must start again; this project has been for stopped for 6 - 9 months and as written currently the developer would have 90 days to begin again; Mr. Lapidus said that would entail getting frames up on the homes, and would make for a tight time frame as takes time to re-bid then actually build

Commissioner Lyle said, "The September 30 date should give you time, then." Mr. Lapidus said, "That would probably be OK. Would we need the sheer and roof sheeting by September 30 for a full reduction?" Commissioner Mueller said, "You might not be able to get it all done, but you could apply the process to a number of units designated." Mr. Lapidus said, "Economy of scale is one of our few hopes."

Commissioner Tanda inquired about Jasper Park and a request by the City for purchase of a BMR on lot 29. Mr. Lapidus informed that the purchase was completed last week and

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that the only requirement for a BMR was now on lot 39.

Scott Schilling, 16060 Caputo Dr., #160, was present to address the Jarvis -South Valley project and clarifying that South Valley Madrone would be completed in phases 1a, then 1b with 2-3-4 being eligible for the program. "We certainly intend having all 78 units completed as soon as we can get it done," Mr. Schilling explained. SP Linder advised that the arrangements being presented in the proposed resolution were not meant to limit the program and that it does apply to the entire project. Commissioner Lyle added, "Either there will be a table correction or generic language used." Mr. Schilling said he felt it was a good intent to have the entire project considered.

Mr. Schilling then went on to thank to the Planning Commission and staff for working on the achievements of this plan, saying it was 'very necessary' as he detailed price reductions made with 'closing three deals' in December. "This plan is helping and we appreciate it," he said.

Dick Oliver, 385 Woodview Ave. #100, told the Commissioners and staff of being appreciative of the work done. "I especially like that it has been put into an order which is easy to understand," Mr. Oliver said. "Thanks."

Maureen Upton, 8339 Church St., Gilroy, representing the Diana Chan project said, "Thanks for your consideration of this important matter. We are happy with the results of the workshop and all the work done."

With no others present to address the matter, the public hearing was closed.

Attention was directed to several nuances of the proposal:

- (3 page) if a project fails to meet any requirement of the program, the unit will not count towards BMR reduction program
- if a project does not meet September 30, 2009 timeline, but does meet the September 30, 2010 date, then only a partial reduction is possible
- if one of the 90-day windows are not met, then the project phase may not be 'totally out' of the reduction program
- intent to give partial relief
- if work done by 2010 no relief at all for new/upcoming units, but relief for prior units will be retained
- the program is specific to units as described in the staff report and distributed handouts

Responding to questions, SP Linder described situations where one median and one BMR were required, then the median would be eliminated first. Commissioner Mueller commented that would put more onus on the developer. PM Rowe reminded that was part of the recommendation to City Council from the Planning Commission as he provided explanation of what was said. Considerable discussion followed, with Commissioner Lyle reminding, "The City wants units and it is better to have low BMRs than median." Expressing a personal preference for retention of the median BMRs, Commissioner Mueller said, "It would be hard to leave the medians even though they might be preferable."

The public hearing was reopened.

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Mr. Lapidus expressed concern of the potential for having shorted his client with agreement of the September 30 date. "One of the problems in today's world is the lending institutions. If they don't come around {with more lending} the time frame as stated may be difficult to meet. There are so many other factors that we can't control," he said. Commissioner Mueller stated, "You may find it easier to get a loan as you are further along." Mr. Lapidus agreed, but said, "Lending is so uncertain now and if a loan is not forthcoming, then my clients would have to consider out of pocket to meet the deadlines." SP Linder advised that staff likes the September date for better tracking practices.

The issue of dates was discussed at length, with Mr. Lapidus suggesting a 'different date', possibly December 31, 2009 instead of September 30, 2009.

The public hearing was closed.

Commissioner Acevedo asked, "Haven't we spent a lot of time going over other dates and finally deciding on this compromise date?" PM Rowe said, "It is this one project that is having difficulty and so they are asking for the December 31 date."

Commissioner Tanda spoke on the elimination of the low BMR requirement, acknowledging the several applicants who have a mix of median and low. "So I assume there could be greater benefit if the low were eliminate rather than median," he said. Considerable discussion ensued, with a straw vote resultant: eliminate (first) the requirement for low BMR in the event of the need for reduction for a project Commissioners Escobar, Mueller, and Tanda voted *yes*

Further dialogue followed, with the following discussed:

- reducing BMRs to 5% low for everything ~~ could enhance building starts
- City Council requirement is low to be built
- would be would rather have low reduced as better for starting

In a re-vote (straw poll):

Commissioners Mueller, Tanda, Escobar and Chair Koepp-Baker favored eliminating the low BMRs first.

The following was clarified:

- in the first phase there would be 100% reduction of BMRs
- at the end of the first phase, then 5% low BMRs would be required 'no matter what'
- if a project is able to start phase 1, more units could be built
- all phases in 2009-10 are eligible

PM Rowe recalled that in the recommendation from the Planning Commission to the City Council October 15, 2008, for a temporary period, projects committed to the BMR reduction with the date set through 2010. "With the {proposed} action you are discussing now, for the portion that deals with the waiver, a low income unit could be waived and it could become a median. We need to understand now that after 2010 projects would continue with low BMRs and not extend beyond 2010. Then we would go back to the 5% and 8%. If a project goes to the current 10% {reduction}, the project must go thru new competition," he said.

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Commissioner Mueller clarified, "We are saying that between now and 9-30-09, if a project had 2 BMRs - 1 median and 1 low - and only got enough units to deal with the waiver, then that project would have to build a median. I think the problem would be building a median per the City Council decision."

Discussion of the time frame followed, with Commissioner Lyle pointing out, "If a project is started, but misses 2 check points of 90 days each, then the developer must convert the median to a low BMR." Commissioner Mueller said, "If the project must build two BMRs, then the developer would build the median after 9-30-09." Chair Koepp-Baker commented, "If the permits are being pulled and all things are in place in 2009, I think the intent of the City Council would be to have developers move things along for completion in 2010."

SP Linder advised that the City Council had indicated:

By 9-30-09, the developer should have pulled the permit, with the commencement of construction date on the permit; then 90 days were to be allowed for foundation inspection followed within another 90 days, the roof and sheeting inspection, whereupon, that unit will count for reduction. "Those things, in that timeframe, will meet the requirement for full BMR reduction," she said. "Permits after 9-30-09 will qualify for the 50% reduction. If two BMRs are scheduled for phase 1, after 9-30-09 only low BMRS will be applicable."

Commissioner Mueller clarified that there are no medians now as the City Council went to lows during their deliberations. PM Rowe agreed, "The medians are gone." Commissioner Lyle observed, "All the medians on the tables have been converted to lows." The practice of rounding was discussed again.

NOTING THE FINDINGS AND CONDITIONS CONTAINED THEREIN, COMMISSIONER MUELLER OFFERED THE (REVISED) RESOLUTION RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT AMENDMENT APPLICATIONS DAA-05-13C: JARVIS-SOUTH VALLEY DEVELOPERS, DAA 05-04E: E. MAIN-MARRAD/DIVIDEND, DAA 05-02D: COCHRANE-LUPINE, DAA 05-01D: COCHRANE-MISSION RANCH, DAA 04-5C: BARRETT-ODISHOO, DAA 05-07D: WRIGHT AVE.-MANANA, DAA 04-09D E. DUNNE-DEMPSEY, DAA 05-05D E. CENTRAL-DELCO, DAA 05-08D: CHURCH-ALCINI, DAA 05-10C BARRETT-SYNCON, DA 06-04 DIANA-CHAN INSERTING LANGUAGE INTO THE PROJECT AGREEMENTS WHICH WILL ALLOW FOR THE POTENTIAL REDUCTION IN THE PROJECT BMR COMMITMENTS, AND FURTHER MODIFICATION TO REFLECT:

- *any* unit not meeting the requirement becomes ineligible for that phase
- all phases with allocations through the 2009-10 allocation year are eligible for participation in the BMR reduction program
- further revision to paragraph g: the two (90-day) foundation and sheer and roof inspections by 9-30-09 are required.

COMMISSIONER LYLE SECONDED THE MOTION.

Under discussion, there was a request to reopen the public hearing.

Mr. Oliver said, "I believe the City Council said the 5 % low replaced the 8% median so there would be a commitment of 5% low and 8% median for all future phases."

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Commissioner Lyle expressed a recollection during Planning Commission discussion that the future requirements would be held to 5 – 5. PM Rowe clarified: the Council has said it will go back to 5% low and 8% median.

The public hearing was closed.

THE MOTION THE MOTION PASSED (6-0-0-0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE. One vacancy exists on the Commission.

2) EXTENSIONS OF TIME - DEVELOPMENT AGREEMENT AMENDMENT AND DEVELOPMENT SCHEDULE AMENDMENTS

Requests to amend the commencement of construction date with the Residential Development Agreements for projects awarded a building allotment under the City's Residential Development Control System (RDCS). Also requested is amendment to the project development schedules.

2a) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-01D: COCHRANE-MISSION RANCH: The Mission Ranch project is located on the west side of Peet Rd., east of Mission View Dr. in the R-1 7,000 RPD zoning district. (APN 728-32-010)

2b) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-02D: COCHRANE-LUPINE (ALICANTE): Phase 3B consisting of 18 dwelling units. The overall project site is approximately 61 acres in size and is located north of Peet Rd. and east of Cochrane Rd. in a R1(12,000)/RPD zoning district. (APNs 728-49-062 thru -064)

2c) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-04E/DSA-07-04D: MAIN-MARRAD/DIVIDEND (SAN SAVIGNO): A 35-unit single-family residential project site located on the south side of east Main Ave., approximately 500 ft. east of Calle Mazatan in an R-1 7,000 PD zoning district. (APN 726-16-028)

2d) DEVELOPMENT AGREEMENT AMENDMENT, DAA-05-13C: JARVIS-SOUTH VALLEY DEVELOPERS (MADRONE PLAZA): A 60-unit town home project site approximately nine acres in size, located at the southeast corner of Cochrane Rd. and Monterey Rd. in an R3 (PUD) zoning district. (APN 726-25-076)

2e) DEVELOPMENT AGREEMENT AMENDMENT, DAA-04-05C: BARRETT-ODISHOO (VILLAS OF SAN MARCOS): A 36-unit single-family project located on the southwest corner of the intersection of Barrett Ave. and San Ramon Dr. in the R-1 7,000 RPD zoning district. (817-33-003)

SP Linder presented the staff report, noting, "In this item, five applicants have asked for revisions/modifications to the development agreements." She then called attention to the provided tables relating to the original and proposed dates. "There were instances where staff looked at the dates further [table: right hand column (#3)] and thought it might put a lot of pressure on the applicants," as she went on to identify the recommendations for modifications to the development schedule and the development agreements. SP Linder then identified specific changes to the various projects (e.g., Madrone Plaza; Odishoo – which had received an ELBA from the City Council), and the potential results following the changes for all the projects, as outlined in summary on page 5 of the staff report.

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Chair Koepp-Baker opened the public hearing.

Mr. Oliver told the Commissioners he had reviewed the information with staff and concurred with their appraisal. "I appreciate their efforts," he said.

Commissioner Lyle said, "I'm surprised you didn't ask for an extension for 2009-10 as you have 30 units with the same dates (Mission Ranch)." Mr. Oliver responded, "When I wrote the letter the direction from City Council was that they didn't want to address date changes so far out. But I should have asked for more time. If it is possible to do so now, I would appreciate it (like San Savigno). I know I will not be able to do as I've stated, unless conditions improve, but I'm not optimistic about that. So my request would be the same as San Savigno – moving up the time a year to commence construction 5-30-11."

SP Linder told the plan for pushing dates commence construction from 6-30-10 to 6-30-11.

Commissioner Lyle explained a concern was that the project appears to be asking for more units (15) in 2010-11. Mr. Oliver said, "This is an ongoing project, and I would hate to have to come back." Commissioner Lyle discussed the dates and the fact that staff is trying to correct phase 3 with variable dates. Mr. Oliver expressed concern that 'this is now very far out and I think the City Council may have difficulty with that'. Discussion continued regarding the time frame (and a potential difference) for the Mission Ranch project.

Mr. Schilling spoke to the Commissioners regarding:

- support of the recommended extension for the Jarvis South Valley project
- 1 item of concern (*disclosure: this concern had been discussed with Commissioner Lyle*) the extension would be to 2010-11 and if 15 allocations were given to on-going projects, he would still have the condos and town homes could be going at same time (56 units left undone in the two separate projects)
- the condos might actually be cheaper to construct
- hope to finance at same time

Commissioner Lyle asked if there was need for that large of an extension for the 15, 2007-08 units; Mr. Schilling said he could be flexible on that. Commissioner Lyle continued, "I understand you would accept a date of 4-30 for pulling permits, then 6-30 for commence construction."

Mr. Oliver returned to the podium to say: "Alicante has the same issues as Mission Ranch. Please consider for 08-09 allocations, changing the 'pull permits to 8-30-10 and commence construction to 9-30-10 which is consistent with the BMR reduction plan and is the same for phases 4 and 5.

Scott Murray, 80 E. Main Ave, #B, thanked staff for their hard work and indicated a question regarding the Villas of San Marcos. "With the building permits for phase 3 & 4, in phase 3 we will be pulling five permits and for phase 4 we are asking for two additional months for commence construction. We would like to build all 18 units at one time as that would make getting financing easier.

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With no others present to speak to the matter, the public hearing was closed.

Commissioners discussed:

- if change dates as requested, commence construction after 9-30-11 meeting the date would be difficult
- starting to push dates way out, think reasonable not wanting developers to return in 6-8months
- in past. have given incentives to start earlier
- potential for specific projects change 'pull permits' date
- ability to provide option if can start sooner, then good

COMMISSIONER MUELLER OFFERED A RESOLUTION, INCLUSIVE OF THE FINDINGS AND CONDITIONS THEREIN, RECOMMENDING {for agenda item 2}:

- **#1 Resolution for MC-04-25: Cochrane – Lupine recommending a 6-month extension of the commencement date for the FY 2006-07 allocations and a 3-month extension of the FY 2008-09 allocations and approving a 7-month extension of the obtain building date for FY 2006-07 and a 4-month extension of the obtain building permit date for FY 2008-09; authorizing staff to change the dates as indicated in discussion, and inclusive of the findings and conditions therein.**
- **#2 Resolution for MC-04-26: Cochrane-Mission Ranch recommending a 6-month extension of the commencement of construction date for the FY 2007-08 allocations a 2-month extension of the FY 2008-09 allocations, and a 12-month extension of the commencement date for FY 2009-10; approving a 6-month extension of the obtain building permit date for FY 2007-08, a 2-month extension of the obtain building permit date for FY 2008-09 and a 12-month extension of the obtain building permit date for FY 2009-10; authorizing staff to change the dates as indicated in discussion, and inclusive of the findings and conditions therein.**
- **#3 Resolution for MC-04-19: E. Main-Thrust/Marred (Dividend) recommending an 8-month extension of the FY 2006-07 allocations, a 12-month extension of the FY 2007-08, a 20-month extension of the FY 2008-09 allocations and a 12-month extension of the FY 2009-10 allocations and approving a amendment to the development schedule for application to extend the obtain building permits date for the FY 2006-07 allocations by 6 months, extend the obtain building permits date for the FY 2007-08 allocations by 12 months, and extend the obtain building permits date for the FY 2008-09 and FY 2009-10 allocations by 7 months.**
- **#4 Resolution MP-02-22/MC-04-13: Barrett-Odishoo recommending a 14-month extension of the commencement of construction dates for FY 2007-08 and FY 2008-09 allocations and approving an extension of the obtain building permit date for FY 2007-08 by 7 months and FY 2008-09 by 13 months.**

Discussion ensued as to the need for changing the dates for 'obtain building permit'; however, the dates were left as presented in the staff report.

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- **#5 MC-04-22: Jarvis – South Valley Developers recommending an 8-month extension of the FY 2007-08 allocations and 12 month extension of the FY 2006-07, FY 2008-09, and FY 2009-10 allocations and approving an amendment to the development to extend the date to obtain building permits for FY 2006-07 and FY 2008-09 by 12 months, extend the date to obtain building permits for FY 2007-08 by 13 months and extend the date for obtain building permits for FT 2009-10 by 16 months.**

Commissioner Tanda provided the second to the motion, and noted the inclusion of the findings and conditions in each of the recommendations and approval resolutions.

During discussion, issues with the San Savigno application haven gotten 16 units on the same date with the recognition of need for change at this time was discussed.

Commissioner Mueller commented on the (dated) length of some of the extension recommendations, saying, “That’s so far out, who knows what will happen?” Mr. Oliver reiterated, from the audience, “The City Council expressed reluctance to go too far out time wise.”

Commissioner Lyle said, “We will need to have staff reinforce to City Council this is everyone’s best guess.”

THE MOTION THE MOTION PASSED (6-0-0-0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE. One vacancy exists on the Commission.

Chair Koepp-Baker advised of a change in the order of the agenda: item 4 would be heard at this time, followed by item 5, and concluded with agenda item 3 to facilitate participation by Commissioner Lyle who has the potential for conflict of interest with item 3 and will be excused for that item and the remainder of the meeting.

**4) ZA-07-10/
DA-07-04/
DS-08-04:
GINGER-
MURRAY**

A request for approval of a precise development plan, development agreement and development schedule for a five-unit single family development on a 0.74-acre site located on the south side of Peebles Avenue bounded by Rose Lane and Ginger Way. The site is zoned R1(7000) Single Family District. A mitigated Negative Declaration is proposed. (APN 726-36-071)

PM Rowe reported this item was being returned from the October 2, 2008 Planning Commission meeting. “Now, staff is request to meet with the applicant and his engineer for resolution of design. Therefore, this item is not ready to be acted on this evening. It will be agendaized once we have the issues resolved,” Pm Rowe said.

Chair Koepp-Baker opened the public hearing.

Scott Murray told the Commissioners there had been some question of the guidelines for getting information in. “We are – and have been - working with staff to remedy the matter,” Mr. Murray said.

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With no others present indicating a wish to speak to the matter, the public hearing was closed.

COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO TABLE THE MATTER OF ZA-07-10/DA-07-04/DS-08-04: GINGER-MURRAY. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT. One vacancy exists on the Commission.

5) RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) QUARTERLY REPORT

Quarterly review of the progress of Residential Development Control System (RDCS) approved residential projects and if necessary, make recommendations to the City Council regarding the rescission of building allotments.

PM Rowe presented the data of the quarterly report. "You have just spent much time discussing the market, and extending timelines for many of the existing projects," PM Rowe said. He then provided details of the following:

- projects downtown: Depot - Granary and the Glenrock projects, which are vertical mixed use projects that are behind schedule
- the Granary is not a viable project – at this time: 'it just won't pencil for the applicant who is waiting for the Downtown Specific Plan
- both the Granary and Glenrock projects will expire 6-30-09 and will need to go through the development agreement and development schedule extension requests, while asking for an ELBA
- notification necessary for projects which are behind schedule
- some Zoning needed is holding up projects
- there are no new building permits secured at this time
- it was pointed out that certain phases of Alicante have been completed

Commissioner Acevedo asked if Monterey Sherman was a City-owned project? [yes] Then, he said, it should be identified as such in the report. PM Rowe advised of the process with a letter received from the City as to how to be compliant, and assured it would be clearly identified as a City owned project in future reports.

Commissioner Mueller requested inclusion of a table in future reports which would identify recent (non)actions for those projects contained in the quarterly report.

Chair Koepp-Baker opened the public hearing.

Rocke Garcia was present to provide an update on the Sunsweet project. Mr. Garcia said he was working with staff (David Heindel, Assistant to the City Manager) and now the number of units for Sunsweet was significantly higher than under Measure C. "We are assuming the specific Downtown plan will pass and we will have to revise what was done under Measure C," Mr. Garcia said.

Commissioner Lyle asked if there was intent to compete again for more units? Mr. Garcia said, "Yes, we will go from 57 to 80 + units, and that will be significantly different if I understand the process." Commissioner Lyle stated that under Measure C, the applicant may be able to keep the original 57 units, and compete for other allocations. SP Linder advised that under Measure C, the applicant must show the project in total.

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Mr. Garcia said, "We just need to make sure Downtown Specific Plan passes, and then work with staff on the specifics for Sunsweet."

The public hearing was closed.

Commissioner Mueller asked about a timeline for the Downtown plan? PM Rowe advised it should be 'this spring'.

Commissioner Lyle commented, "If it passes then under Measure C, he could work toward the next competition.

COMMISSIONERS MUELLER/LYLE MOTIONED APPROVAL OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) QUARTERLY REPORT, DIRECTING STAFF TO FORWARD SAME TO THE CITY COUNCIL. THE MOTION PASSED (6-0-0-0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE. One vacancy exists on the Commission.

Commissioner Lyle was excused at 8:52 p.m. due to the potential for the conflict of interest as he lives in development to be under discussion. PM Rowe also left the meeting explaining he had 'finished with his portion of the meeting' and needed to prepare for the City Council meeting the following evening.

**3) ZAA-04-01/
DAA-04-08D/
DSA-07-06C:
TILTON-
GLENROCK**

A request for approval to amend the development agreement for phases 8, 9 & 10 (47 units) of the 210 unit Capriano project. The applicant is requesting to extend the deadline to commence construction, modify below market rate commitments for the project and modify other improvement commitments with the development agreement. The zoning amendment request is to modify unit types and eliminate other zoning requirements. The Capriano project is located on the south side of Tilton Ave. west of Monterey Rd. and east of Hale Ave. (APNS 764-32-017 & 018)

SP Linder gave the staff report, noting the eight modifications requested (listed on page 1 of the staff report) and addressing each. SP Linder spoke to each of the other requests, and detailed the items which needed further discussion:

1. agreement with some portion of BMR reduction program
2. need for discussion of Tilton Ave. improvements
3. deferral of school improvements from phase 9 >> phase 11
4. cost for school improvements (phase 9) {disagreement}
5. elimination of nursery school staff (staff agreed, given current economic conditions)
6. staff disagrees; this has been discussed at length of part of BMR program {rolling any fractions into future phase payment of partial at final phase}
7. (Mr. Garcia assured he was not serious about #7: a 48 month extension of time, but that he did need an extension of time)
8. requested as indicated

SP Linder noted there were also requested amendments to the approved precise plan:

deletion of BMR (model 130 / substitution of plan 1515

in phase 8 applicant wants to delete 4 BMRs and in phase 9, 2 BMR deletions; staff has opposition to that plan

However, staff is recommending, SP Linder said,

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- BMR reduction
- payment of minimum of \$3,000/unit
- elimination of nursery site
- some extension and incorporation of ELBA
- no partial BMR mitigation fee payment
- not in agreement with precise development plan modifications
-

Disclosure: Chair Koepp-Baker and Commissioner Mueller had met (individually) with Mr. Garcia regarding this matter.

Commissioner Acevedo asked if, in elimination of the preschool and the applicant would be enabled to build homes – if a point change would occur. SP Linder said there would not be a point change.

Commissioners discussed:

- if the 2 BMRs into phase 8 was a deferral [no; it was an advancement and at the time staff thought it was good thing - 2 BMRs would be built; however, now the applicant is proposing elimination of 2 BMRs]
- applicant had already agreed to the precise plan
- questions of school funding development (there is potential for potential for closing Burnett school due to low attendance)
- City is assisting with other improvements on the other side of the street

Chair Koepp-Baker opened the public hearing.

Mr. Garcia spoke to the Commissioners, addressing items of:

- the map and all improvements for the final phases (7- 8- 9 – 10) has been completed
- the former nursery school site, now called Phase 11 must have a filed parcel map
- this project has the highest cost per unit for BMR lots and building costs greater than any other
- improvements installed in hopes for a come back of market
- in phase 8, would have been required 4 BMRs if can build all 20 units and reduce BMRs (request)
- on lot 1 & 2, already built units will be committed as BMRs
- corner lots, could easily be converted to BMRs, if didn't achieve goal of framing, etc
- staff has said there is not diversity in product size and price; the difference is that in this part of Capriano, with the lots on Dougherty Ave., square footage in targeted range can provide a flex plan (same architect being utilized as before (Doug Dahlen)
- those flex plans would provide 4 additional plans (hoping to be able to will sell in \$700-800,000 range)
- at park and on periphery, large homes so there will be an ultimate of mix

Mr. Garcia said, that as other issues have been identified, he would hope the Commissioners would adopt the revised resolution, and added he would like a reduction of 4 BMRs.

Mr. Garcia went on to discuss Plan 1515, saying, “We built these a lot in Capriano as 2

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story, 4 bedroom BMRs. We've submitted to City a plan for going back to the Architect and structural engineer to see if we can have BMR reductions, and then we will build 1 BMR and then upscale the moderate BMR units."

"We would also like to go to 90 points BIG rather than 110 points. These units will sell for \$500-600,000," Mr. Garcia explained. "Staff has worked hard on this and we appreciate this clean up of items."

He then discussed the frontage improvements on the south side of Tilton and said he was waiting for the City to build the extension of Tilton when 'we will be able to finish the south side of the street so there will be a safe walking route from Monterey to Burnett'. On the north side of Tilton, the committee said 3,000/unit and we are working on a number of units, Mr. Garcia advised. "For that number we will pay towards \$3,000 per unit and we've already paid \$89,000 which includes all engineering, the PG&E, the underground telephone. If we had funds, we could do it now, but we are asking for a delay until the homes across the street are built then we will have a half street. Normally we could just go ahead, but now in this bad economy, we are asking for a delay at the school site," Mr. Garcia said.

He concluded by thanking staff for the recommendation to eliminate the nursery school, noting the nursery at Burnett school, with another in the area closed having been closed.

The public hearing was closed.

Note: during the course of discussion, Mr. Garcia answered several questions and provided information. Each time he stood at the podium, Chair Koepp-Baker opened and closed the public hearing in proper form. Reference regarding that action is hereafter omitted from these minutes.

Considerable discussion was devoted to the request for BMR reduction/elimination/postponement – and whether the requirement could be met. Responding to a question by Commissioner Acevedo, Mr. Garcia clarified that the BMR reduction would still to be retained, Mr. Garcia explained the modified set back unit where he was proposing 2,400 sf instead of 1515 sf (basically 1,000 sf difference). The building at Coriander and Dougherty will be BMRs, Mr. Garcia said.

Commissioner Mueller said, "I'm struggling with the unit size change. The intent of the program to release BMRs and change them to affordable market rate. We never talked about changing unit sizes." He also pointed out that at the nursery school site, the applicant would get 2 more building lots. "You need to meet the precise development plan; I have an issue with allowing larger units."

SP Linder advised that the applicant had submitted plans for the current phase BMRs – in 2007 and the applicant was notified in 2007 that the plans were incomplete and had not been plan checked - missing structural and plumbing plans. She also reminded, "The premise behind the December workshop: if plans had not gone through plan check, they would not be eligible for a 90 point commitment under Build It Green." With this project, plans for models 5 & 6 have been submitted and plan checked and would be 90 points with BIG; drawings for the BMRs are incomplete, have not been plan checked and so were not eligible for 90 points with BIG but 110 points. Mr. Garcia said, "These are same

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plans (12 have been built at Capriano). At the end of 2007, the Code changed: structural engineering tells what had to be done different.”

Commissioner Mueller clarified: Models 5 and 6 went through plan check; then the Code changed. Work had already been done when the Code change occurred and a lot of applicants rushed in with incomplete plans so they could have the ‘projects locked in with the date known’. Responding to a question from Commissioner Tanda, Commissioner Mueller further clarified those ‘locked down’ projects which had received permission to begin work under the old Code could qualify for 90 points under BIG.

Commissioner Acevedo commented, “If we change this, it could open a can of worms – other projects will want to build larger homes on the BMR sites. The spirit of BMR reduction was to have units built and take away burden of below market rate, but would provide the opportunity for the developers to continue to work.”

Commissioners also discussed:

- all applicants understand the need to build to their precise plan but might ask for further consideration
- because of incentives, e.g., dropping nursery school site, the applicant is willing to keep the 1515 plan and sell at market rate as agreed
- retention of the precise plan
- 4 BMRs in phase 8
- by giving up nursery, 2 more large homes
- question if BIG points should be set at 90 instead of 110 (it was noted that other projects which had not completed plan checks had to go to 110)
- earlier phases of the project had been completed

SP Linder advised, “A lot of projects such as Dividend interchange plans between projects. Staff looks at each project as a Master Plan so it may not be OK to change plans such as is being requested. Plans must go through plan check *and* meet new Code. While the applicant has obtained building permits as part of prior phases, for this phase, the City has never been given a Master Plan for the entire project, only individual phases.

Commissioner Tanda asked, “Does staff have any sense of how much cost is added to the 1515 plan when increasing the 90 points to 110? [no] Chair Koepp-Baker reminded it is not only a cost factor, but also structural changes which must be considered. SP Linder added, “Structural changes depend on what is being done.”

Considerable discussion followed regarding the request for reduction of the BMRs / changing the BMR floor plan / moving BMRs to different phases.

Mr. Garcia returned to the podium to discuss:

- development map
- other phases, plan check completed (those completed were tentatively identified)
- corner of Basil and Dougherty a 1515 plan would be placed
- revised {proposed} Resolution ~ changes to the development agreement:
page 3 - set 1 model BMR floor plan 1515 at 90 points; all others must score 110
 - ◇ 4 BMRs in phase 8 changed to other phases
 - ◇ requested model change to BMRs [Commissioner Tanda questioned

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this, with Mr. Garcia speaking to the difficulty of competing financially; “The plan check was turned in but not finished; it was turned in to meet Code change deadlines,” he said.]

The issue of the requirement for improvements to the school frontage was discussed next. The lengthy discussion included factors of:

- location of phase 10, including proximity
- completion of \$89,000 improvements to school frontage
- all improvements completed for phases 8-9-10; now at school, pavement, curb, gutter and water line remain
- frontage on south side being done by Public Works (applicant put up bond for \$100,000) and City will partner on sewer lift station so this will provide safe walking route
- on the south side (with phase 9) this project also committed for full improvements at school; now asks for deferred to end of project; staff recommends they be completed as part of phase 9

Chair Koepp-Baker asked Mr. Garcia for explanation of the schedule for off site improvements; he complied, saying the schedule he proposes would be easier. That led to discussion of improvements and costs, with it being reiterated that just now the applicant wants deferment for frontage improvements. SP Linder advised, “Now the applicant asks to just do the Southside; on the north side at the school, there is the potential for a project between the school and the railroad tracks.”

Mr. Garcia said, “The improvement project stops when the money runs out – it is a dollar commitment.” It was determined that the improvements could go beyond school property. He continued by saying, “In all discussion with Public Works, they did not indicate value for a sidewalk on the north side of the street, so we have concentrated on the south side.” SP Linder reminded, “The type of Improvements are up to Public Works; timing is a Planning Commission issue.”

Commissioner Tanda asked when funds available for this project would be available (part of phase 9). “I agree this has the potential of a safety issue,” Commissioner Tanda said. “The path could be considered costly but it is a safety issue and I support Public Works.”

Chair Koepp-Baker asked, “As improvements are being done at the corner of Tilton and at the railroad tracks, does Public Works have estimate as to what the cost for improvements would be on the north side?” Mr. Garcia responded, “They have estimated costs on our site; and we have committed to \$3,000 per unit.” Chair Koepp-Baker remarked, “If we say agree with Public Works and want the work done now, it would create hardship and slow development. However, I place a high priority on the safety of children. I am in favor of improvements on the north side at whatever level Public Works wants.”

Commissioner Mueller determined that the developer is committing to timing either phases 9 or 10, basically by planning completions at the same time. [yes]

Commissioner Mueller said he was struggling with more students walking to Sobrato and the south side improvements are being built now. “I don’t think Burnett school kids are walking in the morning; it’s mostly high schoolers,” he said.

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SP Linder reminded of the commitment to improvements 'prior to or part of phase 9'. Commissioners discussed the merits of requiring the improvements in either phase 9 or 10, with Commissioner Acevedo noting, "The dates will be landing about the same time." Commissioner Tanda said, "If everything goes as planned, good; if phase 10 is delayed, then there is the question of phased improvements."

Substantial discussion developed regarding the need for improvements being completed at the school, and in which phase:

~~Commissioner Escobar~~ said he was ambivalent on the matter, noting the possibility that school won't be in service by time this all built "I don't see it as an urgency."

~~Commissioners Acevedo and Tanda~~ favored completion in phase 9

~~Commissioner Mueller~~ said he could 'go with phase 10 but only in the first half of phase 10 – so 6 units must held back until improvements are in

~~Chair Koepp-Baker~~: OK at the end of phase 9; emphasis on improvements as a requirement

~~Commissioner Tanda~~ remarked, "Either at the end of phase 9 or not at all, depending on the circumstances of phase 10 and whether school remains opened."

The zoning amendment request had been resolved, with the applicant withdrawing, as agreed.

Mr. Garcia spoke at length on the request to use plan 1515.

COMMISSIONER MUELLER OFFERED A RESOLUTION, INCLUSIVE OF THE FINDINGS AND CONDITIONS THEREIN, RECOMMENDING CITY COUNCIL DENIAL OF THE ZONING AMENDMENT REQUEST TO AMEND THE PRECISE DEVELOPMENT FOR THE CAPRIANO PROJECT LOCATED ON THE SOUTH SIDE OF TILTON AVE., WEST OF THE RAILROAD AND EAST OF HALE AVE. COMMISSIONER ACEVEDO SECONDED THE MOTION, WHICH PASSED (5-0-0-1) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, ESCOBAR, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: LYLE. *One vacancy exists on the Commission.*

COMMISSIONERS MUELLER/ACEVEDO MOTIONED TO GRANT PERMISSION FOR SUBSTITUTION OF THE 1515 FLOOR PLAN FOR FOUR BMRS. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; LYLE WAS ABSENT. *One vacancy exists on the Commission.*

NOTING THE FINDINGS AND CONDITIONS CONTAINED WITHIN, COMMISSIONER MUELLER OFFERED THE REVISED RESOLUTION, RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT AMENDMENT APPLICATION DAA 04-08: TILTON-GLENROCK RECOMMENDING A 12 MONTH EXTENSION OF THE FY 2006-07 ALLOCATIONS, 15 MONTH EXTENSION OF THE FY 2007-08 ALLOCATIONS, AND A 12-MONTH EXTENSION OF THE FY 2008-09 ALLOCATIONS, APPROVING AN AMENDMENT TO THE DEVELOPMENT SCHEDULE, INSERTING LANGUAGE INTO THE PROJECT AGREEMENTS WHICH WILL ALLOW FOR THE POTENTIAL REDUCTION IN THE PROJECT BMR COMMITMENTS, AND OTHER MINOR LANGUAGE AMENDMENTS TO

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PARAGRAPH 14 OF THE DEVELOPMENT AGREEMENT, INCLUDING MODIFICATIONS OF:

- 4 BMRs allowed phase 8 (page 3 of resolution) so change point 1 of 3 to allow BIG at 90 points, change regarding the language of the precise development
- allow the Burnett frontage concurrent with first 6 units of phase 10
- eliminate requirement for the nursery school site
- accepted \$3,000/unit ~ no cap; no minimum

COMMISSIONER ACEVEDO PROVIDED THE SECOND TO THE MOTION WHICH PASSED (5-0-0-1) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, ESCOBAR, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: LYLE. *One vacancy exists on the Commission.*

Commissioner Tanda asked the record to show he was in support of the position of Public Works to receive funds to proceed with the required improvements for safety. "My concern is for safety for the City's youth."

ANNOUNCEMENTS/ COMMISSIONER IDENTIFIED ISSUES:

Commissioner Mueller asked if there is need to follow up with the workshop when the Planning Commission met with City Council on the Downtown Plan? "I thought they had asked us to review the options presented prior to Council action – and I thought such action was scheduled for February," he said.

Commissioner Acevedo broached the subject of having community action regarding an alarm to warn of impending danger for the City's residents in the event of a catastrophic event at the Anderson Dam. He noted that a recent newspaper article had been written of such potential. It was noted that the Santa Clara Valley Water District is undertaking a study regarding the need for controlling water levels at the dam. SP Linder advised of the City's Emergency Service Coordinator could be asked to provide a presentation for the Commissioners. Commissioner Tanda suggested it might be beneficial to have the matter referred to the City Council as well.

CITY COUNCIL REPORTS:

SP Linder said, "We hope for a new Planning Commissioner to be named tomorrow night at the City Council meeting. We understand three citizens applied and were interviewed." Commissioner Mueller advised, "An e-mail containing a supplemental agenda item (tentative) was sent out by City Hall this afternoon, and it appears there is intent to appoint John Moniz as the new Planning Commissioner."

ADJOURNMENT:

Having ascertained there was no further business to come before the Commissioners at this meeting, Chair Koepp-Baker adjourned the meeting at 10:32 p.m.

MINUTES RECORDED AND PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk